

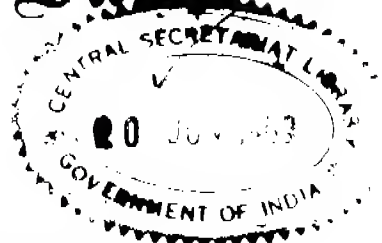


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भाग II—खण्ड 2
PART II—Section 2
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following report of the Joint Committee on the Bill to define and amend the law with respect to the liability of the Government in tort and to provide for certain matters connected therewith was presented to Lok Sabha on 25th March, 1969:—

COMPOSITION OF THE COMMITTEE

Shri A. K. Sen—*Chairman*

MEMBERS

Lok Sabha

2. Shri K. Anirudhan
3. Shri N. C. Chatterjee
4. Shri R. R. Singh Deo
5. Shri Devinder Singh
6. Shri Anrudha Dipa
7. Shri Shri Chand Goyal
8. Shri R. M. Hajarnavis
9. Shri S. Kandappan
10. Shri Brij Bhushan Lal
11. Shri Baij Nath Kureel
12. Shri Srinibas Mishra
13. Shri H. N. Mukerjee
14. Shri Amrit Nahata
15. Shri K. Narayana Rao
16. Shri M. Narayan Reddy

*Appointed w.e.f. the 30th July 1968 in the vacancy caused by the death of Shri Mali Mariyappa.

17. Shri Mohammad Yunus Saleem
18. Shri A. T. Sarma
19. Shrimati Savitri Shyam
20. Shri N. Sethuramane
21. Shri M. R. Sharma
22. Shri Narayan Swaroop Sharma
23. Shri Biswanarayan Shastri
24. Shri T. M. Sheth
25. Shri Devendra Vijai Singh
26. Shri Mudrika Sinha
27. Shri G. Viswanathan
28. Shri S. Xavier
29. Shri Ram Sewak Yadav
30. Shri P. Govinda Menon

Rajya Sabha

31. Shri S. B. Bobdey
32. Shri Rama Bahadur Sinha
33. Shri Gulam Haider Valimohmed Momin
34. Shri Y. Adinarayana Reddy
35. Shri Krishan Kant
36. Shri M. P. Shukla
37. Shri Hira Vallabha Tripathi
38. Shri M. H. Samuel
39. Shri B. T. Kemparaj
- **40. Shri Chakrapani Shukla
41. Shri Dahyabhai V. Patel
42. Shri N. K. Shejwalkar
43. Shri Balkrishna Gupta
44. Shri C. Achutha Menon
45. Shri G. P. Somasundaram.

LEGISLATIVE COUNSEL

1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*
2. Shri N. D. P. Namboodiripad, *Joint Secretary, Legislative Department, Ministry of Law.*
3. Shri R. V. S. Peri Sastri, *Additional Legislative Counsel, Legislative Department, Ministry of Law.*
4. Shri G. N. Saksena, *Assistant Draftsman, Official Language (Legislative) Commission, Ministry of Law.*

SECRETARAT

Shri M. C. Chawla—*Deputy Secretary.*

**Appointed on 13th August, 1968 vice Sardar Raghbir Singh Panjha-zari resigned.

REPORT OF THE JOINT COMMITTEE

1. I, having been authorised to submit the report on behalf of the Joint Committee to which the Bill* to define and amend the law with respect to the liability of the Government in tort and to provide for certain matters connected therewith was referred, present their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced on the 22nd May, 1967 in Lok Sabha. The motion for reference of the Bill to a Joint Committee was moved in Lok Sabha by Shri Mohammad Yunus Saleem, Deputy Minister in the Ministry of Law on the 8th May, 1968 and was adopted on the same day.

3. Rajya Sabha discussed the motion on the 13th May, 1968 and concurred in the motion on the same day.

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin Part II dated the 16th May, 1968.

5. The Committee held thirteen sittings in all.

6. The first sitting of the Committee was held on the 17th May, 1968 to draw up their future programme of work. The Committee at this sitting decided to hear oral evidence from the associations/individuals etc. desirous of presenting their views before the Committee and to issue a Press Communique inviting memoranda for the purpose. The Committee also decided to issue a circular letter to Chief Secretaries of all the State Governments/Union Territories and to the Bar Council of India and the State Bar Councils and the Bar Associations of the Supreme Court and the High Courts, Chambers of Commerce and Industry and all-India representative trade unions' organisations inviting their comments on the provisions of the Bill. The Chairman was authorised to decide, after examining the memoranda submitted by the associations/individuals as to which of them should be called upon to give oral evidence before the Committee.

7. 16 memoranda/representations etc. on the Bill were received by the Joint Committee from different associations/individuals etc.

8. At their 2nd, 3rd, 7th to 10th sittings held on the 3rd and 4th July and 5th, 24th, 25th and 26th October, 1968, the Committee heard the evidence given by leading legal figures and interested organisations.

*Published in the Gazette of India, Extraordinary, Part II, Section 2. dated the 22nd May, 1967.

9. The report of the Committee was to be presented by the last day of the first week of the Fifth Session. As this could not be done, the Committee at their second sitting held on the 3rd July, 1968 decided to ask for extension of time for presentation of their Report upto the last day of the Sixth Session. Necessary motion was brought before the House and adopted on the 22nd July, 1968. At their ninth sitting held on the 25th October, 1968, the Committee again decided to ask for further extension of time upto the 31st March, 1969 which was granted by the House on the 18th November, 1968.

10. The Committee considered the Bill clause-by-clause at their Eleventh and Twelfth sittings held on the 11th and 12th February, 1969.

11. The Committee have decided that the evidence given before them should be printed and laid on the Tables of both the Houses *in extenso*.

12. The Committee have further decided that the memoranda submitted by various associations, bodies, organisations, Government Departments etc. should also be laid on the Tables of both the Houses and a copy thereof be placed in Parliament Library for reference by members after the Report of the Committee had been presented to the Houses.

13. The Committee considered and adopted the Report on the 7th March, 1969.

14. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

15. *Clause 3.*—Sub-clause (a) (ii) of the clause deals with liability of Government in respect of any tort committed by an employee or agent of the Government while acting beyond the course of his employment. The sub-clause in the Bill as introduced provided that Government would be liable in respect of any such tort only if the act constituting the tort was done by the employee or agent on behalf of the Government and is ratified by the Government. The Committee are of the opinion that if any tort is committed by an employee or agent of the Government while acting beyond the course of his employment but on behalf of the Government it would not be fair to make ratification of the act by the Government a condition precedent for holding the Government liable for the tort. The Committee are also of the opinion that there may be situations in which Government should have freedom to ratify an act done by its employee or agent while acting beyond the course of his employment, although such act was not done by the employee or agent on behalf of the Government. The Committee have accordingly substituted the word 'or' for the word 'and' in sub-clause (a) (ii) of clause 3.

Sub-clause (b) (iii) of clause 3 makes the Government liable for any tort committed by an independent contractor employed by the Government where the act contracted to be done although lawful is of such a nature that unless reasonable care is taken, it is likely in the ordinary course of events to cause personal injury or damage to property in the doing thereof and such care has not been taken. The proviso to this sub-clause enables the Government to shift the liability on the contractor by making an express stipulation to that effect in the contract to be signed by it with the contractor. The Committee have noted that the proviso is not based upon any recommendation of the Law Commission. The Com-

mittee are of the opinion that it is not correct in principle to affect, by a stipulation in a contract between Government and an independent contractor, the rights of third parties and that the proviso will have the effect of placing Government in a more advantageous position than a private person who entrusts work to an independent contractor. They have accordingly omitted the proviso to sub-clause (b) (iii) of Clause 3.

16. *Clause 11.*—Sub-clause (f)—The amendment is of minor nature and necessitated by developments after the introduction of the Bill.

Sub-clause (i) of this clause provides for exemption to Government from liability in respect of acts done by members of police force and certain other public servants for the prevention or suppression of a breach of the peace, or a disturbance of the public tranquillity or a riot or an affray or for the prevention of any offences against public property. The Committee are of the opinion that such exemption should be provided for only in respect of acts done in good faith for the purposes aforesaid. The Committee have amended the clause accordingly.

17. *Clause 1 and Long Title.*—The amendments are of formal character.

18. The Joint Committee recommend that the Bill as amended be passed.

NEW DELHI;
the 7th March, 1969.

N. C. CHATTERJEE,
*Acting Chairman,
Joint Committee.*

Bill No. 43 B of 1967

THE GOVERNMENT (LIABILITY IN TORT)
BILL, 1967

(AS REPORTED BY THE JOINT COMMITTEE)

(Words underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

To define and amend the law with respect to the liability of the Government in tort and to provide for certain matters connected therewith.

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:---

Short
title,
extent
and com-
mence-
ment

1. (1) This Act may be called the Government (Liability in Tort) Act, 1969.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(a) “agent”, in relation to the Government, means a person (other than an employee of the Government) who being employed to do any act for the Government is, in doing the act, under the order or control of the Government;

(b) “employee of the Government” means any person who—

(i) is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union; or

(ii) is a member of a civil service of a State or holds any civil post under a State;

(c) “Government”, in relation to any liability imposed under this Act, means—

(i) where a tort is committed by an employee of the Government while acting in connection with the affairs of the Union, or by an agent or independent contractor employed by the Central Government, the Central Government;

(ii) where a tort is committed by an employee of the Government while acting in connection with the affairs of a State, or by an agent or independent contractor employed by a State Government, the State Government;

(d) “independent contractor”, in relation to the Government, means a person who contracts to do an act for the Government, but who in doing the act is not under the order or control of the Government.

3. Subject to the provisions of this Act, the Government shall be liable in respect of any tort—

Liability
of Gov-
ernment
in tort.

(a) committed by an employee of the Government or an agent employed by the Government,—

(i) while acting in the course of his employment; or

(ii) while acting beyond the course of his employment if the act constituting the tort was done by the employee or agent on behalf of the Government or is ratified by the Government;

(b) committed by an independent contractor employed by the Government or any of his servants or workmen in doing the act contracted to be done for the Government in any of the following cases (and in no others), namely:—

(i) where the Government assumes control of the act contracted to be done by the independent contractor;

(ii) where the Government has authorised or ratified the act of the independent contractor alleged to constitute the tort;

(iii) where the act contracted to be done although lawful is of such a nature that unless reasonable care is taken it is likely in the ordinary course of events to cause personal injury or

damage to property in the doing thereof and such care has not been taken;

* * * *

(iv) where the Government is under a legal obligation to do the act itself;

(v) where any law for the time being in force imposes upon the Government an absolute duty to ensure the safety of persons or property in the doing of the act contracted to be done and there has been a failure to comply with that duty.

Liability of Government in tort as owner or occupier of immovable property.

4. Where the Government is the owner of any immovable property, or is in possession or occupation of, or exercises control over, any immovable property, the Government shall be liable in respect of any breach of duty attaching by law to the ownership, possession, occupation or control of such property in the same manner and to the same extent as a private person of full age and capacity:

Provided that where any such property vests in the Government by virtue of any rule of law which operates independently of the acts or intentions of the Government, the Government shall not, by virtue of this section, be subject to any liability in tort by reason only of the property being so vested, but the provisions of this section shall be without prejudice to the liability of the Government thereunder in respect of any period after the Government or any person acting for the Government has, in fact, taken possession or control of any such property, or entered into occupation thereof.

Liability of Government in tort in respect of escape of dangerous things.

5. The Government shall be liable in respect of any personal injury or any damage to property caused by any dangerous thing in the possession of the Government or over which the Government exercises control in the same manner and to the same extent as a private person of full age and capacity would be liable in similar circumstances if he were in possession of, or exercised control over, such thing.

Liability of Government in respect of breach of duties to its employees.

6. The Government shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject in respect of any breach of those duties which a person owes to his servants or agents under any law for the time being in force by reason of being their employer:

Provided that in awarding compensation to any employee of the Government or any agent employed by the Government in respect of any personal injury or any damage to property caused by the breach of any such duties, the court shall take into account the amount, if any, paid or required to be paid by the Government, whether by way of disablement benefit, compensation or otherwise, to such employee or agent under any other law for the time being in force.

Statutory limits as to the amount of liability to apply to claims against Government also.

7. Any enactment which negatives or limits the amount of liability of any employee of the Government or an agent employed by the Government in respect of any tort committed by such employee or agent shall, in the case of any proceedings against the Government under this Act in respect of such tort, apply in relation to the Government as it would have applied to such employee or agent if the proceedings against the Government had been proceedings against that employee or agent.

8. In any proceedings against the Government under this Act, the Government shall be entitled to raise by way of defence the same pleas which a private person would be entitled under law to raise if a similar suit had been instituted against such person.

Defences open to Government.

9. Where the Government is subject to any liability in tort by virtue of this Act, any law relating to indemnity and contribution shall be enforceable by or against the Government in respect of the liability to which it is so subject as if the Government were a private person of full age and capacity.

Indemnity and contribution.

10. (1) Any act done by a member of the armed forces of the Union while on duty as such or by a member of a police force while on duty as such shall not subject either him or the Government to liability in tort for causing the death of another person or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Union or, as the case may be, a member of the police force if—

Special provisions relating to armed forces of the Union and police forces.

(a) at the time the thing is suffered by that other person he either is on duty as a member of the armed forces of the Union or as a member of the police force or, though not on duty, is on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Union or, as the case may be, for the purposes of the police force; and

(b) the Government certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to any award under any law or scheme relating to the death or disablement of members of the force of which he is a member;

Provided that this sub-section shall not exempt a member of the armed forces of the Union or a member of a police force from liability in tort in any case in which the court is satisfied that the act was not connected with the execution of his duties as a member of those forces or that force.

(2) No proceedings in tort shall lie against the Government for death or personal injury due to anything suffered by a member of the armed forces of the Union or a member of a police force if—

(a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces or that force; and

(b) the Government certifies as mentioned in the preceding sub-section;

nor shall any act of an employee of the Government subject him to liability in tort for death or personal injury in so far as the death or personal injury is due to anything suffered by a member of the armed forces of the Union or by a member of a police force, being a thing as to which the conditions aforesaid are satisfied.

(3) The Government or an officer authorised by the Government in this behalf, if satisfied that it is the fact—

(a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Union or as a member of a police force; or

(b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not or were or were not used for the purposes of those forces or that force, may issue a certificate certifying that to be the fact; and any such certificate shall, for the purposes of this section, be conclusive as to the fact which is 10 certified.

(4) In this section, the word "Government" means,—

(a) in relation to a member of the armed forces of the Union or of a police force maintained by the Central Government, the Central Government; 15

(b) in relation to a police force maintained by a State Government, the State Government.

Savings.

11. Nothing contained in this Act shall render the Government liable in respect of—

(a) any act of State;

(b) any act done by the Government in the discharge of its 20 functions in relation to any of the matters enumerated in entries 10, 11, 12, 13, 14, 15 and 16 of List I in the Seventh Schedule to the Constitution;

(c) any act done by the President of India in the exercise and performance of the powers and duties of his office in relation to the 25 summoning and prorogation of the Houses of Parliament, the dissolution of the House of the People, the assent to, or the withholding of assent from any Bill, the return of any Bill to the Houses for reconsideration of the Bill or any specified provisions thereof or the issue of any Proclamation under the Constitution;

(d) any act done by the Governor of a State in the exercise and 30 performance of the powers and duties of his office in relation to the summoning and prorogation of the House or Houses of the Legislature of the State, the dissolution of the Legislative Assembly, the assent to, or the withholding of assent from, any Bill, the 35 reservation of any Bill for the consideration of the President or the re-return of any Bill to the House or Houses for reconsideration of the Bill or any specified provisions thereof;

(e) any act done under a Proclamation issued under the Constitution;

(f) any act authorised by or under the Trading with the Enemy 40 (Continuance of Emergency Provisions) Act, 1947. or the Enemy Property Act, 1968;

16 of 1947.

34 of 1968.

(g) any act done in the exercise of the powers vested in the Union for the purpose of training, or maintaining the efficiency of, 45 the armed forces;

(h) any act done by a member of the armed forces of the Union while on active service;

(i) any act done in good faith for the prevention or suppression 50 of a breach of the peace, or a disturbance of the public tranquillity;

or a riot, or an affray, or for the prevention of any offences against public property, by—

(i) a member of a police force; or

5 (ii) a public servant whose duty it is to preserve peace and order in any area or place or who is engaged on guard, sentry, patrol, watch and ward, or other similar duty in relation to any area or place;

(j) any act done or ordered to be done by a judge, magistrate, or any other person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him;

10 (k) any act in connection with the execution of lawful warrants or orders of a judge, magistrate, or any other person discharging or purporting to discharge any responsibilities of a judicial nature vested in him, done by any person bound to execute the warrants or orders;

15 (l) any act for which immunity is granted under the Indian Telegraph Act, 1885, the Indian Post Office Act, 1898, or under any other enactment for the time being in force;

13 of 1885,
6 of 1898.

9 of 1890. 20 (m) any act in respect of which a remedy is provided under the Indian Railways Act, 1890, or under any other enactment for the time being in force;

25 (n) any personal injury or any damage to property caused by an act which by its nature is likely in the ordinary course of events to cause such injury or damage, if the doing of the act is authorised by any enactment for the time being in force;

(o) any claim arising out of defamation, malicious prosecution or malicious arrest;

(p) any claim arising out of the operation of any quarantine law;

30 (q) any claim arising in a foreign country.

12. The provisions of this Act shall not affect any proceedings by or Pending against the Government which have been instituted before the com- proceed- mencement of this Act, and such proceedings shall be disposed of as if ings. this Act had not been passed.

35 13. In the Fatal Accidents Act, 1855, in section 4, for the words 'the word "person" shall apply to bodies politic and corporate', the following Amend- shall be substituted, namely:— ment of Act 13 of 1855.

'the word "person" shall apply to bodies politic and corporate and the Government'.

S. L. SHAKDHER,
Secretary.

